

**United States Department of Labor
Employees' Compensation Appeals Board**

B.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

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**Docket No. 16-0410
Issued: April 4, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On January 5, 2016 appellant filed a timely appeal from a December 22, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 16-0410.

This case has previously been before the Board. By decision dated March 16, 2011, the Board remanded the case for further development following an October 15, 2009 OWCP merit decision which denied appellant's claim, finding that she failed to establish that she sustained any occupational noise exposure.¹ The Board found that OWCP, in its October 15, 2009 decision, had initially requested that the employing establishment provide evidence regarding appellant's occupational noise duration or levels of exposure to hazardous noise during her federal employment. The employing establishment failed to respond. The Board remanded the case for OWCP to further request that the employing establishment submit evidence concerning any occupational noise surveys and address the length and period of appellant's noise exposure. The findings and facts as set forth in the prior decision are hereby incorporated by reference.

On remand, by letter dated June 4, 2015, OWCP requested that the employing establishment provide any evidence concerning occupational noise surveys and address the length and period of appellant's exposure.

¹ Docket No. 10-940 (issued March 16, 2011).

By letter dated June 24, 2015, the employing establishment responded that the request had been forwarded to the manager of the Cincinnati Processing Distribution Center, but that no response had been received.

By letter dated October 19, 2015, OWCP again requested that the employing establishment provide any evidence concerning occupational noise surveys and address the length and period of appellant's exposure.

In a November 12, 2015 response, the employing establishment reported that there was no evidence that a noise survey had been ordered at appellant's duty station.

By decision dated December 22, 2015, OWCP denied appellant's claim, finding that the evidence of record failed to establish occupational noise exposure as alleged. It also noted that appellant had failed to respond to its earlier development letter requesting information regarding her employment history and nonoccupational exposure to noise.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision. In its December 22, 2015 denial, OWCP found that appellant had failed to establish fact of injury by demonstrating that a specific event, incident, or exposure occurred at the time, place, and in the manner alleged because she had failed to provide a statement describing her occupational noise exposure. However, the record reflects that appellant had responded to OWCP's May 28, 2009 development letter in a narrative statement dated June 8, 2009. Following the Board's March 16, 2011 decision remanding the October 15, 2009 OWCP decision, a June 1, 2011 memorandum to the file indicates that a June 8, 2009 statement from appellant for this occupational claim had been misfiled in another claimant's file in error. The statement was found and moved to the correct file in this claim, No. xxxxxx614.

In this June 8, 2009 narrative statement, appellant reported that she had been hired on November 3, 1984 and worked in multiple jobs during her employment with the employing establishment. She stated that in buildings A and B she was exposed to loud noise from machines, which included small parcel and bundle sorters, flat sorter machines, automated flats sorting machines, OCR machines, automated induction systems, industrial powered equipment, tow motor operators, forklifts, pallet lifts, jitneys, rolling stock, all-purpose containers, gurneys, hampers, house trucks, and flat tubs. Appellant stated that her exposure to employment-related noise occurred on a daily basis. She had filed no prior claims for hearing or ear problems and engaged in no hobbies which exposed her to loud noise. Appellant explained that her service with the postal service spanned over 25 years where she was exposed to hazardous noise while working in both buildings and continued to be exposed to this noise causing her problems with her hearing loss. She further noted that she attempted to obtain copies of prior assignments from the employing establishment, but was informed that they could not provide her that information as it dated too far back.

As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.² It

² See *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, 41 ECAB 548 (1990) (OWCP did not consider new evidence received four days prior to the date of its decision); see *Linda Johnson*, 45 ECAB 439 (1994) (applying *Couch* where OWCP did not consider a medical report received on the date of its decision).

makes no difference that the claims examiner may not have been directly in possession of the evidence. Indeed, Board precedent envisions evidence received by OWCP, but not yet associated with the case record when the final decision is issued, must be provided merit review.³ In its final decision, OWCP made no reference to any evidence submitted by appellant and found that she failed to establish that the occupational noise exposure occurred as alleged noting that the employing establishment was unable to provide further evidence. It does not appear that OWCP considered the June 8, 2009 narrative statement which was previously misfiled in a different claim.⁴ As such, the Board cannot review such evidence for the first time on appeal.⁵

The Board finds that this case is not in posture for a decision. Consequently, the case will be remanded for OWCP to fully consider appellant's evidence which was properly submitted prior to the December 22, 2015 decision. Following this and such other development as deemed necessary, OWCP shall issue an appropriate merit decision.

IT IS HEREBY ORDERED THAT the December 22, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this order.

Issued: April 4, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

³ *Id.*

⁴ The Board notes that the June 8, 2009 narrative statement consisted of three pages each of which contained the claim No. xxxxxx614 clearly handwritten by appellant on the top of the document for proper filing of her claim.

⁵ 20 C.F.R. § 501.2(c).